

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1860.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 118.]

The Committee on Claims, to whom was referred the case of David Myerle, reported from the Court of Claims, unanimously report:

The claim was first presented to the Senate by the memorial of the claimant at the 1st session of the 28th Congress, and has been continuously prosecuted to this time.

The nature of the claim is shown by the evidence taken before the Court of Claims, and which is briefly recited in the decision of the court as showing the nature of the arrangement made by Mr. Paulding, in 1839, as Secretary of the Navy.

Mr. Paulding states, that while he was at the head of the Navy Department the claimant called on him with reference to certain improvements he had made in the machinery for manufacturing cordage; that, perceiving the claimant to be an intelligent and enterprising man, he suggested to him that it might be advantageous to him to engage in the business of water-rotting hemp; and that the claimant stated, that although he did not believe the occupation to be dangerous to those engaged in it, yet, being then engaged in a profitable business, he was unwilling to relinquish it for one which he foresaw would be attended with almost insurmountable obstacles, and a failure in which would involve him in great pecuniary loss. *The Secretary then assured the claimant that the department would take care that he should be recompensed for any loss he might ultimately sustain in consequence of a failure of the experiment; and he states that he made this promise solely in the hope of being instrumental in conferring a great benefit on his country, and under a full conviction that if he remained in office he would redeem his pledge, without transcending his powers or violating any existing law. He says, further, that the claimant, being influenced, as he believes, by these assurances, as well as by motives of patriotism, acceded to his proposition, and a contract was entered into with him for two hundred tons of American water-rotted hemp; that the claimant made no application for a contract; that the proposal came from the Secretary; that no advertisements for proposals were issued, nor was any security demanded for the fulfillment of the contract, as the whole affair*

was considered as an experiment, made with a view to settle a question of great national importance. Mr. Paulding says, also, that his object was to remove the prejudice against the process of water-rotting, and demonstrate the practicability of producing a domestic article equal to the first quality of Russian hemp.

The claim is based upon the grounds, 1st. That the hemp delivered by him at Boston, under the contracts, was improperly rejected, whereby the enterprise, which promised remuneration, was converted into the means of his ruin; and 2d. Upon the promise of indemnity against loss made by the Secretary of the Navy.

Upon both of these grounds the Court of Claims decided against the claimant, holding that there was no legal liability which could be enforced in that court against the government, as the act of 3d March, 1809, provides that "all purchases and contracts for supplies or services which are or may, according to law, be made by or under the direction of either the Secretary of the Treasury, the Secretary of War, or the Secretary of the Navy, shall be made either by open purchase or by previously advertising for proposals respecting the same."

The court while, however, deciding against the legal liability of the government, thought, from the peculiar circumstances of the case, that they should lay the facts before Congress, with the remark that "the evidence tends to show that an active and enterprising man of business became embarrassed in his circumstances, and was deprived of the just and fair profits of an honest occupation by his efforts to promote a matter of national concern," and they therefore submit "the whole matter to the consideration of Congress for such action as they, under all the circumstances, shall consider just and equitable."

The committee are of opinion that it is both just and equitable, under the circumstances of the case, that the applicant should receive compensation.

In reference to the contract for and the delivery of hemp, Mr. Paulding states, in his letter of 4th January, 1853:

"In all the testimonials I have given in behalf of your claim, I was governed by no papers or representations of yours. I stated facts, and only such facts as were known to myself, and many of them notorious to the public. I stated, in the first place, that it had long been the wish of the government to procure a supply of American water-rotted hemp for the consumption of the navy, in order that the country might be independent of foreign nations, especially in time of war; but that all efforts had been unsuccessful, principally on the score of its being universally considered in the West an unhealthy occupation, fatal to the slaves who would be principally employed in the business.

"I stated that, in consequence of my solicitations and encouragement, you were unwillingly induced to undertake this most important business, and that, accordingly, a contract was entered into for the supply of several hundred tons of American water-rotted hemp.

"I stated that, after surmounting great obstacles, you at length succeeded so far as to deliver a large supply of American water-rotted hemp at the Boston navy yard, which, being tested with the best Russia, proved considerably stronger, but was rejected by the inspectors on the frivolous pretext that it was not quite so clean; and I now

state that the late Commodore Nicholson, who afterwards commanded at Boston, has since assured me that corrupt means were used to induce the inspectors to come to that decision.

"I further stated, what was already sufficiently notorious, that in consequence of your success in the production of water-rotted hemp, and the proof thus afforded that it was not an unhealthy occupation, others had entered upon it, insomuch that the naval and commercial marine of the United States are in a great measure supplied with American water-rotted hemp, and no longer dependent on foreign nations for an article so indispensable.

"All this I stated from my own knowledge, and not from your papers and representations; and consequently, thus far, there was no deception on your part.

"With regard to your pecuniary circumstances at that time, I said nothing, because I knew nothing, and did not think it had the slightest connection with the justice of your claim. I had a great national purpose in view, and I found in you a man ready to undertake its accomplishment; if you succeeded, the country would be greatly benefited; if you failed, it would be just where it was before. No advances of money were required, and no injury to the public interest could occur from your failure, as the department had then on hand a supply of Russian hemp for two years, if I recollect aright; at any rate, for a very considerable period.

"There was no deception here. Whether solvent or not solvent at the time you entered on the contract are of no consequence to me or the country, provided you succeeded in your undertaking; and with unfeigned respect for Congress, I do not perceive how the decision of this question can affect the justice of your claim in the slightest degree; that is a private affair between you and your creditors.

"The facts I have stated, and which are notoriously true, sufficiently prove that you were the principal instrument in conferring a great benefit on your country; whether rich or poor when you began is of little consequence to any one but yourself. It is sufficient to know that you are now poor, and that this poverty is clearly owing to the improper rejection of your hemp at Boston, which effectually arrested all future efforts, and was sufficient to ruin your affairs. Nothing is more common for men to commence business, or enter on great undertakings, on borrowed capital, and to take the risk of success or failure. Nor, however I may disapprove of such a course, do I think justice should be denied them, because, perhaps, the loss may fall on others. If any other person or persons have a legal claim in any portion of the anticipated bounty of Congress, it seems to me it should be decided by a court of judicature, not by Congress.

"I do not know whether you lost any money by your contract, or whether you had any to loose; but this I know, that you spent years of your life, and encountered a series of labors, obstacles, and discouragement, in prosecuting your undertaking, which deserve some remuneration, and that for the last seven or eight years you have been condemned to a purgatory of cares, anxieties, losses, and disappointments, which I would not have endured for ten times the sum you may receive from the justice or the bounty of Congress."

The damage claimed by Myerle for the rejection of his hemp, as shown by the statement in the report from the Court, page 44, is \$65,000, being the difference between \$150,000, the contract price for 500 tons, and the cost delivered at Boston of \$85,000.

There is a good deal of other evidence in the record, as to whether the hemp was or was not properly rejected; but in the view taken of the case by the Court, in which the committee concurs, it is not necessary to go into the details, and it is only here referred to as one of the items which enter into consideration in the judgement to which the committee have arrived.

It is shown also by the evidence that the rejection of this hemp not only deprived the claimant of the profit which had been anticipated by the contract, but produced overwhelming embarrassment in his pecuniary affairs. At the time he undertook this experiment he appears to have been a man of means, extensively and prosperously engaged in the rope business. His devotion and zeal in the prosecution of the business of water-rotting hemp, under the engagement with the Secretary of the Navy, together with the rejection of his hemp, reduced him to poverty.

In a letter from Secretary Badger, dated Navy Department, May 10, 1841, addressed to Mr. Myerle, he says: "The patriotic spirit which prompted you to the great undertaking in which you are now employed, and the perseverance with which you have prosecuted it, deserve and have the commendation of the department."

The committee find that this experiment was not only prosecuted with great zeal and perseverance, but that it was also conducted to a successful result, promotive of great advantage to the best interests of the country.

On this point there is abundance of proof, but it is not deemed essential to do more than to extract the following:

Willis Stuart, of Louisville, Kentucky, says, in his letter dated November 10, 1845: "I hope that Congress will yet do you justice, as you have certainly lost the last six or seven years in endeavoring to confer a great benefit on your country, and in which you have certainly succeeded. It is said that republics are ungrateful, and they doubtless are so in many instances; yet a distinguished statesman of our day has said: 'Truth was omnipotent and public justice certain;' and I hope that you will yet be amply rewarded for all your toils and sacrifices."

In the letter of Mr. Buchanan, dated Wheatland, September 2, 1850, he says: "When you undertook the task of instructing the hemp growers of the west the art of water-rotting hemp in such a manner as to render it a healthy employment, and had entered into a contract with the Secretary of the Navy to furnish the department with a quantity of the article, I felt a lively interest in your success. This induced me to watch your progress with much solicitude. I had many conversations with you on the subject. *The result of your labors has been a great benefit to the country. We now have an ample supply of an article necessary for self-defense, whilst its cultivation has been and will continue to be a source of profit to many of our agriculturists.*"

Again, in a letter from the same gentleman, dated London, December 14, 1855, he writes: "I am truly sorry my recollection does not serve me in this particular, because I espoused your cause *from a sincere conviction that it was just.*"

In the report of Secretary Mason, dated December 4, 1848, it is stated: "The supply of hemp on hand, and deliverable under contracts already existing, render it unnecessary to advertise for any additional quantity for the present year. *That American hemp can be prepared in quality equal to any in the world has been established by experiments under the most rigid tests.*"

These extracts, together with the statement of Mr. Paulding, heretofore quoted, are sufficient to show that the country has gained great advantage from the services of Mr. Myerle, and as these were performed under an agreement, made *bona fide* with the Secretary of the Navy, it is but just, in the opinion of the committee, that some compensation should be made therefor, though it may be admitted that the law did not authorize the Secretary to bind the government by such an agreement.

The committee has traced the history of this claim in the two Houses of Congress since its first presentation, and find that during the 29th, 30th, 32d, and 33d Congresses, six times have bills been reported in favor of the applicant in the Senate, and during the same period, seven times in the House of Representatives. That, in the 30th and 33d Congresses, the bills passed the Senate, and that, in the 29th, 30th and 32d Congresses the bills passed the House three several times.

The committee has looked to these bills as some evidence of the opinion of Congress as to the amount which should be allowed the claimant. The sum stated in the bills which passed the Senate in the 33d Congress, and the House the 2d session of 32d Congress, is \$30,000, with interest from 1st January, 1850. The committee does not regard this as equivalent to the damages claimed by Myerle, but as those damages do not arise under any binding contract with the government, they adopt the amount which those bills would give, as the nearest approximation to an equitable allowance as the evidence of the case would seem to authorize.

The committee report a bill and recommend its passage.

